

UNITED STATES COURT OF APPEALS

APR 2 2001

TENTH CIRCUIT

PATRICK FISHER
Clerk

PATRICK WESLEY
MACCORMACK,

Plaintiff - Appellant,

v.

D. L. SMITH, doing business as
Smith, Brown & Jones,

Defendant - Appellee.

No. 00-3349

(D.C. No. 00-CV-2003-CM)

(D. Kan.)

ORDER AND JUDGMENT*

Before **SEYMOUR, McKAY**, and **BRORBY**, Circuit Judges.

After examining the briefs and the appellate record, this panel has determined unanimously that oral argument would not materially assist the determination of this appeal. See Fed. R. App. P. 34(a)(2); 10th Cir. R. 34.1(G). The case is therefore ordered submitted without oral argument.

This appeal arises from a breach of contract action. The district court dismissed Plaintiff/Appellant's complaint for lack of federal jurisdiction. On

*This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. The court generally disfavors the citation of orders and judgments; nevertheless, an order and judgment may be cited under the terms and conditions of 10th Cir. R. 36.3.

appeal, Appellant's original pro se brief was deemed deficient because it did not contain a certificate of service. After filing a corrected brief, Appellant filed a memorandum and motion requesting the court affirm the appeal and grant summary judgment. The clerk denied the motion pursuant to 10th Cir. R. 27.2(A)(1) and on the same day Appellee filed a memorandum objecting to Appellant's motion. A request for attorney fees is contained in Appellee's memorandum. Appellant submitted a response, which includes a motion for affirmative relief pursuant to Fed. R. App. P. 27(a)(3)(B).

Although Appellee does not specify a statutory basis for the award of fees, we retain authority under 28 U.S.C. § 1927 to award costs and fees when a party "multiplies the proceedings in any case unreasonably and vexatiously." The affirmative relief Appellant requests is that we dismiss Appellee's previous and future motions on the grounds that an entry of appearance was not filed for Appellee's counsel. Having reviewed the record, we decline to exercise our authority on either request.

Appellee's motion for attorney fees and Appellant's motion for affirmative relief are DENIED.

Entered for the Court

Monroe G. McKay
Circuit Judge